The Government of Alberta's First Nations Consultation Policy on Land Management and Resource Development

MAY 16, 2005

In September 2000, the Government of Alberta ("Alberta") released *Strengthening Relationships: The Government of Alberta's Aboriginal Policy Framework* ("*APF*"). The *APF* sets out the basic structure for Alberta policies to address Aboriginal issues in the province. Within the *APF*, Alberta committed to consult with Aboriginal people when *Land Management and Resource Development*[1] decisions may infringe their existing treaty or other constitutional rights.

The Government of Alberta recognizes and respects the treaties and the lands set aside under the treaties as First Nation reserve lands. Nothing in this document will abrogate or derogate from the treaties. Under Section 35 of the *Constitution Act, 1982*, existing Aboriginal and treaty rights of the Aboriginal peoples of Canada are recognized and affirmed. Alberta recognizes that some activities on provincial Crown lands affect existing treaty rights and other interests of First Nations in Alberta ("*Rights and Traditional Uses*"[2]).

Alberta has the constitutional mandate to manage public lands and the development of natural resources in the province for the benefit of all Albertans.

Alberta desires a practical consultation process that avoids or minimizes impacts on First Nations *Rights and Traditional Uses* and creates greater certainty. Alberta's objective is to build a "made-in-Alberta" policy approach that seeks to improve working relationships throughout the province.

Alberta's consultation process is intended to produce better communication, stronger relationships and easier resolution of issues between government and First Nations. The consultation process also seeks to encourage strong relationships, communication and easier resolution of issues between industry and First Nations. It will provide more effective procedures for addressing First Nations *Rights and Traditional Uses*. Alberta will seek to ensure that this consultation policy is coordinated with related measures that may be undertaken by the federal government.

Policy Statement

Alberta will consult with First Nations where Land Management and Resource Development on provincial Crown land may infringe First Nations *Rights and Traditional Uses*.

Purpose of this Policy

Alberta's *First Nations Consultation Policy on Land Management and Resource Development* (the "Policy") addresses the manner in which Alberta will consult with First Nations and defines the roles and responsibilities of all parties. This Policy is designed to create an approach to consultation that benefits all Albertans.

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[1] *Land Management and Resource Development* means activities arising from dispositions or decisions involving forestry, energy, and water, fish and wildlife management.

[2] *Rights and Traditional Uses* includes uses of public lands such as burial grounds, gathering sites, and historic or ceremonial locations, and existing constitutionally protected rights to hunt, trap and fish and does not refer to proprietary interests in the land.

The purpose of this Policy is to identify a consistent approach to consultation that will be applied by Alberta Government departments involved in *Land Management and Resource Development* decisions. This Policy is intended to define Alberta's role in the consultation process and to set out Alberta's expectations of First Nations and industry.

Alberta's Consultation Model

Alberta held a series of meetings and workshops across the province with First Nations and industry to receive feedback for development of this Policy. Development of this Policy is Alberta's first step. Where appropriate, Alberta will also create Consultation Guidelines to address specific questions about how consultation for *Land Management and Resource Development* should occur in relation to specific activities such as exploration, resource extraction, and management of forests, fish and wildlife. The Consultation Guidelines will be consistent with, and will provide for, implementation of this Policy.

Alberta will review this Policy four years after implementation to assess its approach and consider changes. During those first four years, Alberta will work with First Nations and industry to identify best practices and other strategies to improve Alberta's approach. Where appropriate, changes will be incorporated to allow Alberta's policy and approach to evolve.

Alberta recognizes that many First Nations and *Project Proponents*[3] have longstanding and established relationships that are mutually satisfactory. It is Alberta's intention to foster these existing relationships.

Guiding Principles

Alberta believes that the following principles will result in meaningful consultation by bringing the appropriate parties together in a timely way. With this Policy, Alberta intends to provide a meaningful process in which First Nations, industry and government listen openly to each other before resource development and land management decisions are made.

1. Consultation must be conducted in good faith.

2. Alberta is responsible for managing the consultation process.

3. Consultation will occur before decisions are made, where *Land Management and Resource Development* may infringe First Nations *Rights and Traditional Uses*.

4. While each has very different roles, the consultation process requires the participation of First Nations, the *Project Proponent* and Alberta.

5. Alberta's consultation practices will be coordinated across departments.

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[3] *Project Proponent* refers to Industry parties who propose natural resource developments. Alberta recognizes that in some circumstances the *Project Proponent* may be government.

6. Parties are expected to provide relevant information, allowing adequate time for the other parties to review it.

7. The nature of the consultation will depend on such factors as the extent of potential infringement, the communities affected, and the nature of the activities involved.

8. Consultation should be conducted with the objective of avoiding infringement of First Nations *Rights and Traditional Uses*. Where avoidance is not possible, consultation will be conducted with the goal of mitigating such infringement.

9. Consultation will occur within applicable legislative and regulatory timelines.

Alberta's Responsibilities

Alberta acknowledges it has a duty to consult with First Nations where legislation, regulations or other actions infringe treaty rights. Alberta will manage the consultation process and, where necessary, consult directly with First Nations where *Land Management and Resource Development* on provincial Crown land may infringe First Nations *Rights and Traditional Uses*. Consultation about *Land Management and Resource Development* will occur in two ways: through general consultation and relationship building, and through project-specific consultation.

General Consultation and Relationship Building

Alberta will pursue a broad range of practices that are not related to any specific development proposal but are intended to build relationships, to increase the flow of information between First Nations, industry and Alberta, and to avoid or mitigate impacts on First Nations *Rights and Traditional Uses*. These activities could change over time, depending on the circumstances of the communities or regions involved. These activities will introduce multi-party discussions into everyday work and lead to more effective working relationships and partnerships. For example, Alberta will:

1. Initiate sessions to share information with First Nations about roles and responsibilities of Alberta, on regulatory processes involved in approving resource development projects, and about trends of industrial development around their communities. Alberta will welcome the opportunity to attend information-sharing sessions initiated by First Nations to learn from their experiences related to resource development.

2. Work with First Nations to identify traditional uses of land that may be affected by *Land Management and Resource Development*, support relevant traditional use studies, and ensure that the information collected is used in project planning. Traditional use information will be used in accordance with agreements between the First Nation and Alberta.

3. Work with First Nations to identify practical arrangements on how to implement this Policy and subsequent Consultation Guidelines.

Project-Specific Consultation

Alberta expects the *Project Proponent* to consult with First Nations on proposed projects in accordance with this Policy and Consultation Guidelines and resolve issues where possible. A compliance-monitoring program will ensure that the consultation meets the intent of this Policy and Consultation Guidelines.

Alberta may consult directly with First Nations where major projects are proposed or Alberta's assessment indicates Alberta should engage in project-specific consultation. Assessments will be based on available information about the proposed activity and the First Nations in the relevant geographic area. The nature of the consultations will depend on factors such as the nature of the *Rights and Traditional Uses* identified by the First Nation as being affected by the project, the extent of the potential impact, the communities affected, and the nature of the industry involved.

Alberta will not engage directly in a consultation process for every proposed resource development activity. In most cases Alberta will require *Project Proponents* to conduct procedural aspects of project-specific consultation, but Alberta will retain responsibility to determine whether consultation has been adequate in the circumstances. However, when a specific activity is proposed for which Alberta will consult directly, a lead Ministry will:

1. Engage in meaningful consultation, keeping in mind applicable industry and regulatory timelines and the need for informed understanding among the parties. The consultation process will include gathering and assessing the necessary information from the *Project Proponent* and First Nations, assessing the potential for infringement of the First Nations *Rights and Traditional Uses*, and facilitating discussions between the *Project Proponent* and the First Nation.

2. Maintain a record of the consultation process, including how the First Nations concerns have been considered.

3. Statutory decision-makers will review all information provided during the consultation process, and fully consider the views of industry and the First Nation. In particular, methods to avoid, mitigate or otherwise address potential infringements of First Nations *Rights and Traditional Uses* will be considered and documented.

4. Where the decision is to be made by an independent decision-maker, such as the Alberta Energy and Utilities Board or the Natural Resources Conservation Board, Alberta may report on consultation to the relevant decision-maker.

5. Advise the First Nation and industry in writing of the outcome of the consultation.

Alberta's Expectations of Industry

Alberta expects industry to engage in consultation based on respect, open communication and co-operation. Those who propose natural resource developments are expected to consult with and consider the views of First Nations who could be affected by their developments. Industry should incorporate traditional use data when planning their operations. Alberta expects the

Project Proponent to avoid or mitigate infringement of First Nations *Rights and Traditional Uses*. Alberta's expectations of the *Project Proponent* are as follows:

1. Provide early notification to Alberta and to First Nations before development is authorized to proceed, to ensure they are reasonably informed about the *Project Proponent*'s proposed activities. Information should include short-term and long-range plans in the area.

2. Discuss with First Nations when their proposed activities may infringe First Nations *Rights and Traditional Uses*.

3. Record and address issues or concerns identified by the First Nations and identify how infringements were avoided or mitigated.

4. Upon request, make available to Alberta its documentation and other information related to consultation.

5. Consider the circumstances of the project and avoid infringement of First Nations *Rights and Traditional Uses*. Where avoidance is not possible, the *Project Proponent* is expected to make reasonable efforts to mitigate the infringement.

6. Enter into dialogue with the First Nations regarding opportunities specific to an individual project toward achievement of a positive, sustainable outcome.

Alberta's Expectations of First Nations

Alberta expects First Nations to indicate clearly whether they wish to be consulted on a project. If so, they are expected to communicate openly and to work with industry and Alberta in good faith to identify *Rights and Traditional Uses* and work co-operatively toward resolution. Alberta's expectations of First Nations are as follows:

1. Work with Alberta to identify practical arrangements on how to implement this Policy and subsequent Consultation Guidelines.

2. Clearly identify which *Rights and Traditional Uses* may be infringed by *Land Management and Resource Development* activities.

3. When raising concerns to the *Project Proponent* or government about proposed developments, provide alternate solutions or approaches for resolving particular issues.

4. Initiate sessions for Alberta and the *Project Proponent* to increase awareness of that First Nation's *Rights and Traditional Uses*.

5. Upon request, make available to Alberta that First Nation's documentation and other information related to consultation.

6. Share traditional use information with Alberta and the *Project Proponent* to inform the *Land Management and Resource Development* review and decision-making process.